## REMARKS

Claims 19-35 and 40-52 remain for prosecution in the present application.

Independent Claim 40 and Dependent Claims 42-52

New independent claim 40 is directed to a child-resistant package that includes a container 32 (FIGS. 1-25) or 152 (FIGS. 26-28) and a closure 34 (FIGS. 1-25) or 154 (FIGS. 26-28). (Numerals are identified to facilitate exemplary reference to the text and drawings as filed and not as limitations to the recitations of the claims.) The container has a cylindrical finish 36 or 174 with an open end, at least one external thread 44, and at least one external lug 46 or 176 separate from the external thread and disposed on a side of the external thread opposite the open end of the finish. The closure has a skirt 72 or 164 with at least one internal thread 74 or 156 for engaging the at least one external thread on the container finish. The closure also has a spring element 76 or 172 for urging the closure away from the container finish, and at least one pair of internal lugs 86, 88 or 158, 160 separate from the internal thread. The pair of internal lugs on the closure skirt are adjacent to but circumferentially spaced from each other, and are composed of a trailing internal lug 88 or 160 and a leading internal lug 86 or 158 that is disposed clockwise from the trailing internal lug as viewed from above the package. There is one pair of internal lugs on the closure skirt for each external lug on the container finish. At least one of the external lug on the container finish or the leading internal lug on the closure skirt has a cam face for camming the leading internal lug on the closure skirt over the external lug as the closure is threaded onto the finish, against a force applied by the spring element to the finish, until the external lug on the container finish is received between the internal lugs on the closure skirt and the trailing internal lug on the closure skirt engages the external lug

on the container finish to prevent further threading of the closure onto the finish. Removal of the closure from the finish requires urging the closure onto the finish against the force of the spring element until the leading internal lug on the closure skirt is disposed beneath the external lug on the container finish and permits unthreading of the closure from the finish.

Claims directed to the package of the present application have been rejected over the three-reference combination of Reiss 4,032,028, Cooke 4,739,890 and Cooke 4,139,112.

The Reiss patent discloses a safety package that includes a closure 20 applied to the neck 28 of a container 22 and a resilient disk 52 disposed between the closure and the container neck. The container neck has an external screw thread 30 and a projection 34 separate from the screw thread. The closure has a thread comprised of three segments 36, 38 and 40 (column 2, lines 33-35). There also is an internal projection 44 on the closure skirt spaced from the end of thread segment 40. Projection 34 on the container neck functions as a stop for projection 44 on the closure skirt so that projection 44 is received between projection 34 and thread end 46 when the closure is fully applied (FIG. 5).

As important as what Reiss discloses is what Reiss does not disclose. The internal projection or lug 44 on the closure skirt does not travel over or past the stop lug or projection 34 or the container neck. Thus, neither projection 34 nor projection 44 has any need for a cam surface that enables projection 44 to ride over projection 34 as the closure is applied. There are, of course, no spaced pairs of internal lugs or projections on the

closure skirt, and the external projection 34 on the container finish is never received between any spaced pair of projections on the closure skirt.

Cooke '890 discloses a package in which internal projections on the closure skirt cooperate with external projections or external thread segments on the container neck 24 and a resilient gasket between the closure and the container neck to achieve child-resistant operation. The internal projection on the closure skirt rides over a camming surface on the external projection or the external thread on the container until the closure projection is captured behind the external projection or thread. It is particularly noteworthy that the container in Cooke '890 has either external projections (FIGS. 1-8) or external thread elements 44 (FIG. 7). The reference does not anywhere suggest a combination of external threads and external projections or lugs on the container4. The internal T-shaped locking projections 42 on the closure skirt are provided singly rather than in pairs. The Examiner cites in particular the embodiment of FIG. 8, in which the container has a pair of lugs 56a, 56b that define a space for receiving the T-shaped locking element 50 on the internal projection 48 of the closure skirt (column 6, lines 28-32). It is not clear what the disclosure of Cooke '890 is considered to add to the disclosure of Reiss inasmuch as, in both disclosures, there is but a single internal lug or projection on the closure skirt that cooperates with spaced elements on the container neck to achieve child-resistant operation. Note, in this respect, that Cooke '890 FIGS. 6 and 7 are similar to Reiss in that the single T-shaped locking projection 32 on the inside of the closure skirt is received behind the thread element 42 or 44, exactly as in Reiss.

Cooke '112 adds nothing to Reiss and Cooke '890 insofar as claim 40 is concerned. In the embodiment of FIGS. 1-4, there are projecting members 26a, 26b, 26c

on the internal closure thread 16 that cooperate with individual gaps 32a, 32b, 32c in the container thread 22. Thus, the projecting members 26a, 26b, 26c are not separate from the closure thread, and do not cooperate with projections or lugs on the container neck finish.

To support a rejection of new claim 40, it is necessary that the references teach, suggest or provide incentive to modify the disclosures of the reference in such a way as to meet the limitations of the application claims. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ 2d 1434 (Fed. Cir. 1988); *In re Geiger*, 815 F.2d 686 (Fed. Cir. 1987); *Ex parte Clapp*, 227 USPQ 972 (POBA 1985). This is particularly true, of course, where the elements of the references would be required to coact with each other in a manner different from the way they coact in the reference disclosures, or where the key or distinguishing element of the claims is completely lacking in the references.

> [I]n order to meet the terms of the claims on appeal, the elements of the [prior art] device would have to be arranged in a manner different from that disclosed by [the art]. The elements of the reference would also be required to coact differently from the way they coact in the arrangement disclosed by the reference. The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide motivation or reason for the worker in the art, without the benefit if applicant's specification, to make the necessary changes in the reference device.

*Ex parte Chicago Rawhide Mfg. Co*, 223 USPQ 351, 353 (POBA 1984). See also *Fromsom v. Advanced Offset Plate, Inc.*, 755 F.2d 1549, 225 USPQ 26 (CAFC 1985); *In re Sernaker*,

702 F.2d 989, 217 USPQ 1 (CAFC 1983) and *Ex parte Stauber*, 208 USPQ 945, 946 (POBA 1980).

Simply stated:

> It is wrong to use the [application] as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

*Orthopaedic Equipment Co., Inc. v. U.S.*, 702 F.2d 1005, 217 USPQ 193, 199 (Fed. Cir. 1983). See also *In re Fritch*, supra ("It is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art." 23 U.S.P.Q.2d at 1784); *In re Pavlecka*, 138 U.S.P.Q. 152 (CCPA 1953); *Ex parte Garrett*, 132 U.S.P.Q. 514 (POBA 1961).

There is simply no interpretation of Reiss, Cooke '890 and Cooke '112 that would teach or suggest to persons of ordinary skill in the art to provide a closure having both an internal thread for engaging the external thread 30 in Reiss and at least one pair of internal lugs separate from the internal thread, as distinguished from the single lug 44 in Reiss. Nor is there any suggestion to provide the external lug on the container neck and/or the leading internal lug on the closure skirt with a cam face for camming the leading internal lug over the external lug. It is noted again that the lug or projection 34 in the primary Reiss reference does not perform any camming function, and indeed the lug or projection 44 on the closure skirt never passes behind the lug 34 on the container neck. As noted above, Cooke '890 is entirely consistent with this disclosure in Reiss, and Cooke

'112 is not relevant on this point. Thus, new claim 40 is allowable over the combination of Reiss, Cooke '890 and Cooke '112.

Dependent claims 41-52 are allowable both by reason of dependency from claim 40 and because of the additional novel limitations set forth in these claims. For example, new dependent claim 43 recites that the external lug on the container finish has a cam face that is inclined away from the open end of the container finish for engagement by the leading internal lug on the closure skirt to pull the closure against the spring element. Cooke '890 discloses an inclined cam face 60 on the lug 56a in FIG. 8, but not in combination with thread-type closures and container finishes. In any event, it certainly would not have been obvious to provide such a cam face on the external projection 34 in Reiss because the internal projection 44 in Reiss does not pass behind the external projection 34. Thus, such a modification would defeat the mode of operation for which the primary Reiss reference is intended.

New dependent claim 44 recites that the external lug on the container finish includes a body and a flange circumferentially extending from the body. The body and the flange form a pocket into which the leading internal lug on the closure skirt is received. There certainly is no such flange or pocket in the external projection 34 in Reiss. Nor is there any such flange in either Cooke '890 or Cooke '112.

New dependent claim 48 recites that the spacing between the leading and trailing internal lugs on the closure skirt is insufficient to permit passage of the external lug on the container finish between the internal lugs. This is described at page 11, line 25 to page 12, line 4 of the application text as filed.

Dependent claim 49 recites that the leading internal lug on the closure skirt has a cam face that is angulated to engage the cam face on the external lug of the container finish. Again, there is no such cam face in Reiss, and no reason to provide such a cam face in Reiss because the projections 34, 44 do not ride over each other.

Dependent claims 50-51 are directed to the embodiment of application FIGS. 26-28. Dependent claim 50 recites that the leading internal lug on the closure skirt has a cam face to engage the external lug on the container finish as the closure is applied to the finish. Dependent claim 51 recites that the cam face faces radially outwardly such that engagement of the cam face with the external lug circumferentially stretches the closure skirt. There is no disclosure or suggestion of such a structure in any of the cited references.

New dependent claim 52 recites that the closure skirt has a stepped profile that includes a first portion on which the internal thread is disposed and a second portion stepped radially outwardly from the first portion on which the internal lugs are disposed. This stepped profile is clearly seen in FIG. 14, for example, in which the skirt includes the first portion 72 on which the internal threads 74 are disposed and a second radially outwardly stepped portion 84 on which the lugs 86, 88 are disposed. The stepped profile also is clearly shown in FIG. 26 in connection with the embodiment of FIGS. 26-28. The cited references are completely lacking insofar as this claim language is concerned.

Independent Claim 26 and Dependent Claims 27-29

Independent claim 26 is directed to a child-resistant package that includes a closure and a container. The container finish has at least one lug with an axially oriented cam face that slopes in a clockwise direction away from the open end of the container finish. The closure skirt has at least one lug with an axially oriented cam face that slopes toward the base wall of the closure so that threading the closure onto the finish in a clockwise direction causes the lug on the skirt to cam axially away from the open end of the finish. There are no such cam faces on the projections 34, 44 in Reiss, and provision of such cam faces, in view of Cooke '890 and/or Cooke '112 or otherwise, would be entirely non-obvious in view of the fact that the projection 44 in Reiss never cams beneath the projection 34 in that reference. It hardly would have been obvious to modify Reiss to operate in a manner completely inconsistent with the disclosure of that reference.

Dependent claims 27-29 likewise are allowable for reasons previously discussed.

Independent Claim 19 and Dependent Claims 20-25

Independent claim 19 is directed to a container that has a cylindrical finish, at least one external thread, and at least one stop lug separate from the thread and projecting radially outwardly from the finish. The stop lug has a cam surface and a radially outwardly extending flange spaced clockwise from the cam surface and disposed closer to the open end of the finish than at least a portion of the cam surface.

Claim 19 is rejected as being anticipated by Reiss. It is axiomatic that, in order to "anticipate" a claim, "all the elements in the claim (or possibly their equivalents...) must have been disclosed in a single prior art reference or device." *Radio Steel & Mfg. Co.*

*v. MTD Products, Inc.*, 731 F.2d 840, 845, 221 U.S.P.Q. 657, 661 (Fed. Cir. 1984). Moreover, "it is incumbent upon the Examiner to identify wherein each and every facet of the claimed invention is disclosed in the applied reference." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1462 (BPAI 1990). If anticipation is based upon alleged inherency, such alleged inherency must be certain, and cannot be established by probabilities or speculation. *Ex parte Cyba*, 155 U.S.P.Q. 756 (POBA 1967): *Ex parte Keither*, 154 U.S.P.Q. 320 (POBA 1967). "It is improper for an examiner to attempt to rebuild a reference . . ., in light of appellant's disclosure, in order for it to operate in a manner never intended or contemplated" by the reference to support a rejection based upon alleged anticipation. *Ex parte Garrett*, 132 USPQ 514 (POBA 1961). Although Reiss unquestionably discloses a container having a finish with an external lug 34 spaced from the external thread 30, the external lug has no cam face, and no radially outwardly extending flange spaced clockwise from the cam surface and disposed closer to the open end of the finish than at least a portion of the cam surface. Thus, claim 19 clearly is not anticipated by Reiss.

Nor would claim 19 be obvious over Reiss combined with Cooke '890 and/or Cooke '112. None of those references discloses or suggests an external lug on a container finish, combined with external threads or otherwise, that meet the limitations of claim 19.

Dependent claims 20-25 are patentable over Reiss combined with Cooke '890 and Cooke '112 for reasons previously discussed. Simply stated, it would not have been obvious to modify the external lug 34 in Reiss to provide cam surfaces and/or

external flanges or the like because the internal lug 44 on the closure skirt in Reiss does not cam over or move behind the external lug 34 on the container finish.

Independent Claim 30 and Dependent Claims 31-35

Independent claim 30 recites a closure that includes at least one pair of internal lugs on the skirt spaced from the at least one internal thread on the skirt. The pair of lugs includes a first lug for cooperating with a stop lug on a container finish to prevent unthreading of the closure from the finish absent pressure on the closure against the spring element, and a second lug circumferentially spaced from the first lug for cooperating with the stop lug on the container finish to limit the threading of the closure onto the container finish.

Reiss, of course, discloses a closure having a segmented thread 36, 38, 40 (column 2, lines 34-35) and only one lug 44 spaced from the thread. The closure in Cooke '890 has no internal threads whatsoever. The closure in Cooke '112 has an internal thread and lugs that are formed on the internal thread (column 3, line 64). Thus, the combination of Reiss with Cooke '890 and Cooke '112 clearly does not suggest the subject matter recited in independent claim 30, or in dependent claims 31-35.

Montgomery 6,378,713 is cited relative to dependent claim 35 and cancelled claims 15 and 38. Hedgewick 3,917,096 is cited relative to cancelled claims 15-16 and 37-38. Neither of these references suggests the deficiencies of Reiss, Cooke '990 and Cooke '112 discussed in detail above.

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It therefore is believed and respectfully submitted that all claims 19-35 and 40-52 remaining in the application are allowable at this time, and favorable action is respectfully solicited.

Please charge any fees associated with this submission to Account No. 15-0875 (Owens-Illinois).

Respectfully submitted,

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